UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

JUN 27 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND BY ELECTRONIC MAIL TO
WHITT22@AOL.COM AND SUSAN.LAFFERTY@SUTHERLAND.COM

John Whittington
Responsible Corporate Officer and Vice President
Integrity Biofuels, LLC
780 Industrial Drive
Morristown, Indiana 46161

Susan G. Lafferty
Sutherland Asbill & Brennan LLP
700 6th St NW #700
Washington, DC 20001

Re: Notice of Violation of the Clean Air Act

Dear Mr. Whittington and Ms. Lafferty:

The United States Environmental Protection Agency ("EPA") is investigating Integrity Biofuels, LLC ("Integrity") for compliance with the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671(q), and its implementing regulations. This Notice of Violation ("NOV"), cites Integrity for violations of Titles I and II of the CAA relating to stationary source and mobile source standards applicable to renewable fuel producers.

First, under the mobile source, Renewable Fuel Standards ("RFS"), the EPA alleges that Integrity generated invalid renewable identification numbers ("RINs") because the RINs it generated were based on the incorrect volume of renewable fuel produced. 40 C.F.R. §§ 80.1426(f), 80.1431(a)(1)(ii), 80.1460(a), 80.1460(b)(1), 80.1460(b)(2). EPA also determined that Integrity re-processed fatty acid methyl ester ("FAME"), an ineligible feedstock, and generated RINs upon the final re-processed product, in violation of 40 C.F.R. §§ 80.1426(f), 80.1431(a)(1)(ix), 80.1460(a), 80.1460(b)(1), 80.1460(b)(2), 80.1460(b)(5).

Second, under the stationary source standards, the EPA determined that Integrity failed to comply with the monitoring of emissions and operations, specified in 40 C.F.R. §§ 60.663 and 60.703, failed to comply with the performance testing requirements, specified in 40 C.F.R. §§ 60.664 and 60.704, and failed to prove that it complies with one of the options at 40 C.F.R. § 60.662(a)-(c) and similarly at 40

C.F.R. § 60.702(a)-(c) for the vent streams and associated recovery system of its distillation columns and reactor processes, respectively.

Law Governing Alleged Violations

Mobile Source Standards – Renewable Fuels

This NOV, in part, arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. Section 211(o) of the CAA was originally enacted as part of the Energy Policy Act of 2005 ("EPAct"), and was amended by the Energy Independence and Security Act of 2007 ("EISA"). EPA promulgated the RFS 1 regulations, at 40 C.F.R. Part 80, Subpart K to implement EPAct, and promulgated the RFS 2 regulations at 40 C.F.R. Part 80, Subpart M to implement EISA. EPAct established the first renewable fuel mandate in the United States, and required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012. EISA required EPA to make several important changes to the original renewable fuels regulations, including increasing the volume of renewable fuel required to be blended into transportation fuel to 36 billion gallons per year by 2022. EISA and the RFS 2 regulations also established new categories of renewable fuel with separate volume requirements, and set new greenhouse gas emission reduction thresholds for each separate category of renewable fuel.

The RFS 2 regulations include a credit trading program designed to facilitate compliance with the renewable fuel standards. These credit trading programs allow obligated parties to comply with the annual renewable fuel standards through the purchase of RINs, which are unique numbers generated to represent a volume of renewable fuel. The RFS 2 regulations lay the foundation for achieving significant reductions of greenhouse gas emissions from the use of renewable fuels, for reducing imported petroleum, and encouraging the development and expansion of our nation's renewable fuels sector.

The RFS2 regulations also establish the pathway requirements that must be met by renewable fuel producers before RINs can be generated.[1] Pursuant to 40 C.F.R. § 80.1426(a), "no person shall produce … a renewable fuel without complying with the requirements of 40 C.F.R. § 80.1426 regarding the generation and assignment of RINs." The fuel regulations further prohibit any person from introducing into commerce any renewable fuel that was produced via a process that is not recognized in the person's registration information.

Stationary Source Standards

This NOV, in part, arises under Part A of Title I of the CAA, 42 U.S.C. §§ 7401-7431, and the regulations promulgated thereunder. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the Administrator of the EPA to promulgate regulations establishing New Source Performance Standards ("NSPS"). The NSPS apply to the owner or operator of any stationary source[2] that contains an affected facility,[3] the construction or modification of which is commenced after the date of publication of any standard applicable to that facility.[4] EPA promulgated the Standards of Performance for Volatile

---

[1] *See* 40 C.F.R. § 80.1426.

[2] *See* CAA § 111(a)(3), 42 U.S.C. § 7411(a)(3). "Stationary source" is any building, structure, facility, or installation which emits or may emit any air pollutant.

[3] *See* 40 C.F.R. § 60.2. An "affected facility" under the NSPS is, with reference to a stationary source, any apparatus to which a standard is applicable.

[4] *See* CAA § 111(a)(2), 42 U.S.C. § 7411(a)(2). *See also* 40 C.F.R. § 60.1(a).

Organic Compound ("VOC") Emissions from Synthetic Organic Chemical Manufacturing Industry ("SOCMI") Distillation Operations, at 40 C.F.R. Part 60, Subpart NNN ("NSPS NNN"),[5] and the Standards of Performance for VOC Emissions from SOCMI Reactor Processes, at 40 C.F.R. Part 60, Subpart RRR ("NSPS RRR").[6]

The NSPS NNN and NSPS RRR requirements apply to each affected facility that is part of a process unit[7] that produces any of the chemicals listed in 40 C.F.R. § 60.667 (for NSPS NNN) and 40 C.F.R. § 60.707 (for NSPS RRR) as a product, co-product, by-product, or intermediate.[8] An affected facility includes, among other things, each combination of two or more distillation units[9] (for NSPS NNN) and each combination of two or more reactor processes[10] (for NSPS RRR) and the common recovery system into which their vent streams are discharged, which were constructed, modified, or reconstructed after December 30, 1983 (for NSPS NNN) and June 29, 1990 (for NSPS RRR).[11] A recovery system means an individual recovery device (e.g., absorber, carbon adsorber, or condenser, capable of and used for the purpose of recovering chemicals for use, reuse, or sale) or series of such devices applied to the same vent stream.[12]

Pursuant to 40 C.F.R. §§ 60.662 and 60.702, each owner or operator of any affected facility shall comply with paragraph (a), (b), or (c) of these sections for each vent stream on or after the date on which the initial performance test required by 40 C.F.R. §§ 60.8 and 60.664 (for NSPS NNN) and 40 C.F.R. §§ 60.8 and 60.704 (for NSPS RRR) is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall either:

a. Reduce emissions of total organic compounds (TOC), less methane and ethane, by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 parts per million by volume (ppmv), on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or
b. Combust the emissions in a flare that meets the requirements of § 60.18; or
c. Maintain a total resource effectiveness (TRE) index value greater than 1.0 without use of VOC emission control devices.

The owner or operator of each affected facility must also comply with the monitoring of emissions and operations, specified in 40 C.F.R. §§ 60.663 and 60.703, and the performance testing requirements, specified in 40 C.F.R. §§ 60.664 and 60.704, that apply to the affected facility.

---

[5] 55 Fed. Reg. 26942 (June 29, 1990).
[6] 58 Fed. Reg. 45962 (August 31, 1993).
[7] *See* 40 C.F.R. §§ 60.661 and 60.701. "Process unit" means equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in §§ 60.667 and 60.707.
[8] *See* 40 C.F.R. §§ 60.660(a) and 60.700(a).
[9] *See* 40 C.F.R. § 60.661. "Distillation unit" means a device or vessel in which distillation operations occur, including all associated internals (such as trays or packing) and accessories (such as reboiler, condenser, vacuum pump, steam jet, etc.), plus any associated recovery system.
[10] *See* 40 C.F.R. § 60.701. "Reactor processes" are unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structure are altered and one or more new organic compounds are formed.
[11] *See* 40 C.F.R. §§ 60.660(b)(3) and 60.700(b)(3).
[12] *See* 40 C.F.R. §§ 60.661 and 60.701.

Alleged Violations

Mobile Source Standards – Renewable Fuels

Based on the evidence gathered during the inspection of the Integrity facility on March 3-4, 2015, and the information received from Integrity in response to an EPA Information Request issued on September 1, 2015, EPA has determined that Integrity generated invalid RINs by incorrectly calculating the volumes of biodiesel it produced and improperly generated RINs by reprocessing an ineligible feedstock.

RINs Generated Based on Incorrect Volumes

Integrity loaded finished biodiesel using a mass metering instrument, and then converted mass to volume using a set conversion density of 7.344 lb/gal. Because biodiesel density varies by temperature and feedstock, a single density may not be representative of the actual product produced by Integrity. EPA sampled and tested Integrity's biodiesel and determined the density of the biodiesel based on those samples was 7.383 lb/gal. The regulations at 40 C.F.R. § 80.1426(f) require RINs to be generated based on the volume of renewable fuel produced. By using a default conversion density, Integrity incorrectly calculated the volume of renewable fuel produced. An invalid RIN is any RIN that was based on incorrect volumes of renewable fuel produced. 40 C.F.R. § 80.1431(a)(1)(ii). EPA finds that because Integrity generated RINs using an incorrect volume, D4 RINs were improperly generated, in violation of 40 C.F.R. §§ 80.1460(a), 80.1460(b)(1), 80.1460(b)(2).

Generating RINs for Reprocessed Biodiesel

EPA also determined that Integrity received at least 82,666 gallons of off-spec biodiesel (fatty acid methyl ester, or FAME) as feedstock, processed it, and generated D4 RINs on the volumes processed. "Fatty acid methyl ester" is not listed as a qualifying feedstock under 40 C.F.R. § 80.1426(f)(1) and 40 CFR § 80.1426, Table 1. Integrity has not sought, nor has EPA approved, a petition pursuant to 40 C.F.R. § 80.1416 to generate RINs for biodiesel produced from "fatty acid methyl ester" feedstock. Integrity violated 40 C.F.R. §§ 80.1426(c)(6)(i)(2011) and 80.1460(a) each time it generated a D4 RIN for biodiesel that did not comply with the feedstock requirements of 40 C.F.R. § 80.1426(f)(1) and 40 C.F.R. § 80.1426, Table 1. Integrity then sold the biodiesel with RINs to a third party. Thus, Integrity improperly generated approximately 124,000 D4 invalid RINs by reprocessing the fatty acid methyl ester originally produced by another party, per §§ 80.1431(a)(1)(ix), and in violation of 80.1460(a), 80.1460(b)(1), 80.1460(b)(2), 80.1460(b)(5).

Stationary Source Standards

Based on the evidence gathered during the inspection of the Integrity facility on March 3-4, 2015, and the information received from Integrity in response to the EPA Information Request issued on September 1, 2015, EPA has determined that Integrity failed to comply with the NSPS NNN and NSPS RRR requirements that apply to its distillation columns and reactor processes.

Integrity owns and operates five distillation units, identified as Distillation Column 1, Distillation Column 2, Flash Evaporator T-204, Flash Evaporator T-211, and Flash Evaporator T-226. Integrity also owns and operates five reactor processes, identified as Acid Esterification Reactor T-302, Pre-Transesterification Reactor T-304, Transesterification Reactor R-1, Transesterification Reactor R-2, and

Neutralization Reactor T-224. Integrity constructed all of the distillation units and reactor processes on or after 2006. All of the distillation units and reactor processes vent to the facility's main vent system, and the exhaust stream passes through a condenser that recovers methanol before venting to the atmosphere. Integrity uses this equipment to produce glycerin, a chemical listed under 40 C.F.R. §§ 60.667 and 60.707, as a co-product with biodiesel.

Failure to Comply with NSPS NNN and NSPS RRR Requirements

As a source subject to NSPS NNN and NSPS RRR, Integrity is required to reduce TOC emissions (minus methane and ethane) from the vent streams of its distillation units and reactor processes by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent, combust the emissions in a flare, or maintain a TRE index value greater than 1.0 without use of a VOC emission control device. Based on the information received from Integrity in response to the Information Request, Integrity failed to prove that it satisfies at least one of these three requirements, a violation of NSPS NNN, at 40 C.F.R. § 60.662, and a violation of NSPS RRR, at 40 C.F.R. § 60.702.

Furthermore, Integrity failed to comply with the monitoring of emissions and operations, specified in 40 C.F.R. § 60.663, and the performance testing requirements, specified in 40 C.F.R. § 60.664, that apply to each distillation unit. Similarly, Integrity failed to comply with the monitoring of emissions and operations, specified in 40 C.F.R. § 60.703, and the performance testing requirements, specified in 40 C.F.R. § 60.704, that apply to each reactor process.

Enforcement Authority

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.[13] Sections 113(d), 205 and 211(d) of the CAA authorize EPA to assess a civil penalty of up to $37,500 per day for each violation, plus the economic benefit or savings resulting from each violation.

[13] CAA §§ 113, 204 and 205, 42 U.S.C. §§ 7413, 7523 and 7524.

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Tahani Rivers at (303) 312-7155 or Nicole Cantello at (312) 886-2870, the EPA attorneys assigned to this matter, within ten days of receipt of this NOV.

Sincerely,

Phillip A. Brooks
Director, Air Enforcement Division
Office of Civil Enforcement

cc: Tahani Rivers, OECA/AED/MSEB
Anthony Miller, OECA/AED/MSEB
Ray R. Bagherian, R5 AECAB
Raymond Cullen, R5 AECAB
Nicole Cantello, R5 ORC